

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 3587 / April 18, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15283

In the Matter of

**VECTOR WEALTH
MANAGEMENT, LLC**

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTIONS 203(e) AND
203(k) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 (“Advisers Act”) against Vector Wealth Management, LLC (“Respondent”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 203(e) and 203(k) of the Advisers Act, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondent’s Offer, the Commission finds¹ that:

¹ The findings herein are made pursuant to Respondent’s Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Summary

1. This matter involves custody rule violations and supervisory and compliance failures at Vector, a Minnesota investment adviser registered with the Commission since 1997. From October 2008 to May 2011, an administrative and clerical employee of Vector (“Employee”), forged checks to misappropriate \$33,147 of dividends owed to four advisory clients participating in two pooled investment vehicles (the “Pooled Vehicles”) that were managed by Vector. Although Vector had custody of the Pooled Vehicles’ assets, Vector did not arrange to have the quarterly account statements or audited annual financial statements for the Pooled Vehicles distributed to the clients who invested in them, and Vector was not subject to an annual surprise examination. Vector’s policies and procedures also were not reasonably designed to prevent violation of the custody rule, and Vector failed to conduct an annual review of the adequacy and effectiveness of its compliance policies and procedures. Finally, throughout the relevant period, Vector failed reasonably to supervise Employee with a view to preventing and detecting Employee’s violations of Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder.

Respondent

2. Vector is a Minnesota limited liability company headquartered in Minneapolis, Minnesota. Vector has been registered with the Commission as an investment adviser since 1997. As of July 12, 2011, Vector provided discretionary and non-discretionary investment management services to over 500 client accounts and managed approximately \$422 million in assets. Vector is owned and managed by three principals, Principal A, Principal B, and Principal C. Vector acted as an investment adviser to the Pooled Vehicles.

Other Individual

3. Employee, age 33, resides in St. Paul, Minnesota. Until his termination in May 2011, Employee served as an administrative and clerical employee of Vector.

Background

4. In 2005, a principal of Vector (“Principal A”) identified an opportunity to invest in commercial real estate through a partnership that owned and operated a commercial office building located in Iowa. In January 2006, under the auspices of Vector, he formed Pooled Vehicle 1 to pool investor funds for the purpose of investing in the partnership. Thirteen investors, including Principal A, placed a total of \$700,000 in Pooled Vehicle 1. Eight of these investors were advisory clients of Vector. Each investor purchased membership interests in Pooled Vehicle 1, which in turn, purchased membership interests in the real estate partnership. Principal A acted as managing member of Pooled Vehicle 1. In that capacity, he invested Pooled Vehicle 1’s funds in the commercial real estate partnership, retained and monitored tax, accounting, and legal professionals, handled distributions, and reported on the status of the investment. Neither Vector nor Principal A actively managed the real estate partnership into which Pooled Vehicle 1’s funds were invested.

5. In August 2007, Principal A and another individual not affiliated with Vector formed another similar investment vehicle, Pooled Vehicle 2. Pooled Vehicle 2 invested in four single-asset limited partnerships that owned and operated commercial use buildings in Iowa and South Dakota. Twenty-one investors, including the managing members, participated in Pooled Vehicle 2, investing a total of \$1.9 million in October 2007. Eleven of these investors were advisory clients of Vector. As with Pooled Vehicle 1, each investor purchased membership interests in Pooled Vehicle 2, which in turn, purchased membership interests in the real estate partnerships. In his capacity as co-managing member of Pooled Vehicle 2, Principal A managed Pooled Vehicle 2 in a manner similar to Pooled Vehicle 1.

6. Since 2006 and 2007, respectively, the Pooled Vehicles earned annual dividends that were deposited by the underlying commercial real estate partnerships into two accounts held by a third-party custodian in the name of the Pooled Vehicles. Balances in the Pooled Vehicle accounts were swept into a money market fund on a daily basis. These funds remained in the third-party custodial accounts until a public accounting firm prepared tax forms for the real estate partnerships. Once the forms were prepared, the accounting firm provided Vector with the amount of dividend income due to each investor in the Pooled Vehicles based on the investors' percentage of ownership.

7. Vector then prepared dividend checks to be paid from the Pooled Vehicles' third-party custodial accounts and mailed those checks to investors. Principal A possessed signatory authority over the Pooled Vehicles' third-party custodial accounts but delegated to Employee the task of preparing checks for his signature. Employee was responsible for preparing the distribution checks, obtaining Principal A's signature on them, and mailing them to investors.

8. In October 2008, Employee began misappropriating from the Pooled Vehicles' third-party custodial accounts dividends owed to investors. On at least eleven occasions, Employee wrote checks to himself from the investors' distributions, causing the redemption of money market fund shares sufficient to cover the amount of the check, and took steps to conceal his conduct from others. From October 2008 until discovery of the scheme in May 2011, Employee misappropriated \$33,147 from four investors, all of whom were advisory clients of Vector. By his conduct, Employee willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities.

9. Before the discovery of Employee's misconduct, Vector failed to adopt or implement procedures that were reasonably designed to prevent violations of the custody rule. For example, Vector's policies and procedures were not reasonably designed to ensure that investors in the Pooled Vehicles were sent quarterly account statements pertaining to the Pooled Vehicle investments or audited financial statements on an annual basis. Vector also failed to conduct an annual compliance review of its advisory activities.

10. Vector discovered the Employee's scheme in May 2011 while attempting to reconcile an unrelated, potentially erroneous payment. Vector promptly terminated Employee, restricted his account and system access, and initiated an internal investigation.

11. Vector promptly reported Employee's misconduct to Commission staff members. In June 2011, Vector engaged an independent accounting firm to audit the Pooled Vehicles and prepare a formal accounting of the misappropriated funds. Following this audit, Vector notified the affected clients of the misappropriation and subsequently reimbursed them for the misappropriated amounts with interest, for a total of \$42,986. Employee, in turn, reimbursed Vector for the amounts that Vector repaid to the investors. Vector shared the results of its internal investigation and independent accounting with the staff and cooperated with the staff's investigation. Vector also relinquished custody of the Pooled Vehicles' assets, and retained and expanded the services of an outside compliance adviser.

Violations

12. As a result of the conduct described above, Vector failed reasonably to supervise Employee, within the meaning of Section 203(e)(6), with a view to preventing and detecting Employee's violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

13. Vector also willfully² violated Section 206(4) of the Advisers Act, which prohibits fraudulent conduct by an investment adviser, through its violation of Rule 206(4)-2 promulgated thereunder. Section 206(4) prohibits investment advisers from engaging in "any act, practice, or course of business which is fraudulent, deceptive, or manipulative," as defined by the Commission by rule. Before the amendment of Rule 206(4)-2, effective March 12, 2010, Rule 206(4)-2 provided in pertinent part that it constituted a fraudulent, deceptive, or manipulative act, practice, or course of business within the meaning of Section 206(4) for any registered investment adviser to have custody of client funds or securities unless, among other things, the adviser had a reasonable basis for believing that a qualified custodian was sending quarterly account statements to each of the clients for which it maintained funds or securities, or to each beneficial owner of a pooled investment vehicle, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during the period.³ The pre-amendment rule also provided that, if the adviser sent the quarterly

² A willful violation of the securities laws means merely " 'that the person charged with the duty knows what he is doing.' " *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor " 'also be aware that he is violating one of the Rules or Acts.' " *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

³ The amended Rule 206(4)-2 is not materially different from the pre-amendment rule with respect to the custody violations at issue in this matter, except to the extent that the requirements generally were made more stringent. For example, under the amended rule, an adviser may no longer send its own account statements to clients in lieu of having a qualified custodian send quarterly statements to clients or to investors in a pooled vehicle (which the adviser could do under the pre-amendment rule if it was subject

account statements itself, an independent public accountant generally must verify all of the client funds and securities by actual examination at least once during each calendar year on a date chosen by the accountant without prior notice to the investment adviser (a “surprise examination”).⁴ During the relevant period, however, investors in the Pooled Vehicles never were sent quarterly account statements containing information about the Pooled Vehicle accounts, and Vector was not subject to an annual surprise examination.

14. Vector also willfully violated Section 206(4) of the Advisers Act through its violation of Rule 206(4)-7 promulgated thereunder. Rule 206(4)-7 under the Advisers Act requires registered investment advisers (1) to adopt and implement written policies and procedures reasonably designed to prevent violation by the adviser and supervised persons of the Advisers Act and rules adopted under the Act; (2) to review at least annually the adequacy of the policies and procedures and the effectiveness of their implementation; and (3) to designate a chief compliance officer, who is a supervised person, responsible for administering the policies and procedures. Vector’s policies and procedures were not reasonably designed to prevent violations of the custody rule. For example, Vector had no policies and procedures reasonably designed to ensure that investors in the Pooled Vehicles were sent quarterly account statements pertaining to the Pooled Vehicle investments. Vector also failed to conduct an annual compliance review of its advisory activities.

Remedial Acts

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

16. Independent Compliance Consultant. With respect to the retention of an independent compliance consultant, Respondent has agreed to the following undertakings:

- a. Vector shall retain, within thirty (30) days of the entry of this Order, the services of an independent compliance consultant (the “Independent Consultant”) that is not unacceptable to the Commission staff. The Independent Consultant’s compensation and expenses shall be borne exclusively by Vector.

to a surprise examination each year). Under the amended rule, an adviser generally must be subject to an annual surprise examination and have a reasonable basis for believing that the qualified custodian is sending quarterly statements.

⁴ Both the pre- and post-amendment Rule 206(4)-2(b) provided similar exceptions from the surprise examination and quarterly account statement requirements for a pooled investment vehicle if certain criteria are met, including, among other things, an annual audit of the pool by an independent public accountant and delivery of audited financial statements to investors in the vehicle. These provisions, however, do not apply because the Pooled Vehicles were not audited.

- b. Vector shall require that the Independent Consultant conduct during the second quarter of 2013 and the second quarter of 2014 comprehensive reviews of Vector's supervisory, compliance, and other policies and procedures reasonably designed to detect and prevent federal securities law violations by Vector and its employees (the "Reviews"), including but not limited to violations of Sections 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 promulgated thereunder.
- c. Vector shall provide to the Commission staff, within thirty (30) days of retaining the Independent Consultant, a copy of an engagement letter detailing the Independent Consultant's responsibilities, which shall include the Reviews to be made by the Independent Consultant as described in this Order.
- d. Vector shall require that, within forty-five (45) days from the end of the applicable quarterly period, the Independent Consultant shall submit a written and dated report of its findings to Vector and to the Commission staff (the "Report"). Vector shall require that each Report include a description of the review performed, the names of the individuals who performed the review, the conclusions reached, the Independent Consultant's recommendations for changes in or improvements to Vector's policies and procedures or disclosures to clients, and a procedure for implementing the recommended changes in or improvements to Vector's policies and procedures or disclosures.
- e. Vector shall adopt all recommendations contained in each Report within sixty (60) days of the applicable Report; provided, however, that within forty-five (45) days after the date of the applicable Report, Vector shall in writing advise the Independent Consultant and the Commission staff of any recommendations that Vector considers to be unduly burdensome, impractical, or inappropriate. With respect to any recommendation that Vector considers unduly burdensome, impractical, or inappropriate, Vector need not adopt that recommendation at that time but shall propose in writing an alternative policy, procedure or system designed to achieve the same objective or purpose.
- f. As to any recommendation with respect to Vector's policies and procedures on which Vector and the Independent Consultant do not agree, Vector and the Independent Consultant shall attempt in good faith to reach an agreement within sixty (60) days after the date of the applicable Report. Within fifteen (15) days after the conclusion of the discussion and evaluation by Vector and the Independent Consultant, Vector shall require that the Independent Consultant inform Vector and the Commission staff in writing of the Independent Consultant's final determination concerning any recommendation that Vector considers to be unduly burdensome,

impractical, or inappropriate. Vector shall abide by the determinations of the Independent Consultant and, within sixty (60) days after final agreement between Vector and the Independent Consultant or final determination by the Independent Consultant, whichever occurs first, Vector shall adopt and implement all of the recommendations that the Independent Consultant deems appropriate.

- g. Within ninety (90) days of Vector's adoption of all of the recommendations in a Report that the Independent Consultant deems appropriate, as determined pursuant to the procedures set forth herein, Vector shall certify in writing to the Independent Consultant and the Commission staff that Vector has adopted and implemented all of the Independent Consultant's recommendations in the applicable Report. Unless otherwise directed by the Commission staff, all Reports, certifications, and other documents required to be provided to the Commission staff shall be sent to Kathryn Pyszka, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois, 60604, or such other address as the Commission staff may provide.
- h. Vector shall cooperate fully with the Independent Consultant and shall provide the Independent Consultant with access to such of their files, books, records, and personnel as are reasonably requested by the Independent Consultant for review.
- i. To ensure the independence of the Independent Consultant, Vector:
(1) shall not have the authority to terminate the Independent Consultant or substitute another independent compliance consultant for the initial Independent Consultant, without the prior written approval of the Commission staff; and (2) shall compensate the Independent Consultant and persons engaged to assist the Independent Consultant for services rendered pursuant to this Order at their reasonable and customary rates.
- j. Vector shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two (2) years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing, or other professional relationship with Vector, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Independent Consultant will require that any firm with which the Independent Consultant is affiliated or of which the Independent Consultant is a member, and any person engaged to assist the Independent Consultant in the performance of the Independent Consultant's duties under this Order shall not, without prior written consent of the Commission staff, enter into

any employment, consultant, attorney-client, auditing or other professional relationship with Vector, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two (2) years after the engagement.

17. Recordkeeping. Vector shall preserve for a period of not less than six (6) years from the end of the fiscal year last used, the first two (2) years in an easily accessible place, any record of Vector's compliance with the undertakings set forth in this Order.

18. Deadlines. For good cause shown, the Commission staff may extend any of the procedural dates relating to the undertakings. Deadlines for procedural dates shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday, the next business day shall be considered to be the last day.

19. Certifications of Compliance by Respondents. Vector shall certify, in writing, compliance with its undertakings set forth above. The certification shall identify the undertakings, provide written evidence of compliance in the form of a narrative, and be supported by exhibits sufficient to demonstrate compliance. The Commission staff may make reasonable requests for further evidence of compliance, and Vector agrees to provide such evidence. The certification and supporting material shall be submitted to Kathryn Pyszka, Assistant Regional Director, Chicago Regional Office, Securities and Exchange Commission, 175 West Jackson Boulevard, Suite 900, Chicago, Illinois, 60604, or such other address as the Commission staff may provide, with a copy to the Office of Chief Counsel of the Enforcement Division, no later than sixty (60) days from the date of the completion of the undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate in the public interest to impose the sanctions agreed to in Respondent Vector's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent Vector shall cease and desist from committing or causing any violations and any future violations of Section 206(4) of the Advisers Act and Rules 206(4)-2 and 206(4)-7 promulgated thereunder.

B. Respondent Vector is censured.

C. Respondent acknowledges that the Commission is not imposing a civil penalty based upon its cooperation in a Commission investigation. If at any time following the entry of the Order, the Division of Enforcement ("Division") obtains information indicating that Respondent knowingly provided materially false or misleading information or materials to the Commission or in a related proceeding, the Division may, at its sole discretion and without prior notice to the

Respondent, petition the Commission to reopen this matter and seek an order directing that the Respondent pay a civil money penalty. Respondent may not, by way of defense to any resulting administrative proceeding: (1) contest the findings in the Order; or (2) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

D. Respondent shall comply with the undertakings enumerated in Section III above.

By the Commission.

Elizabeth M. Murphy
Secretary